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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re J.H., a Person Coming Under the
Juvenile Court Law.

H043498
(Monterey County
Super. Ct. No. J48237)

MONTEREY COUNTY DEPARTMENT
OF SOCIAL & EMPLOYMENT
SERVICES,

Plaintiff and Respondent,

v.

T.A.,

Defendant and Appellant.

T.A., the father of J.H., appeals from an order of the juvenile court terminating his parental rights to his daughter, J.H., and selecting adoption as the permanent plan for the child. (Welf. & Inst. Code, § 366.26.)¹ On appeal, father argues that at an earlier hearing the court abused its discretion and denied him due process when it “acquiesced to the suspension of visits” between him and J.H. and then terminated visitation without a finding or evidence that continued visitation would be detrimental to her. Father further argues that the court failed to notify him of the opportunity to seek writ review when reunification services were terminated and the case calendared for a hearing under

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

section 366.26. Finally, father asserts ineffective assistance of counsel because his trial attorney “failed to challenge the deprivation of visitation in court or by appeal.” As none of father’s appellate contentions concerning earlier final appealable orders is cognizable, we will affirm the order.

Background

On December 10, 2014, the Monterey County Department of Social and Employment Services (Department) filed a juvenile dependency petition on behalf of J.H., then seven years old, under section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). The “Jurisdiction/Disposition Report” indicated that the whereabouts of C.L., J.H.’s mother, were unknown. Father was the presumed father of J.H. He was homeless. Father had a history of substance abuse and criminal behavior. His extensive criminal history included “multiple convictions for possession of marijuana and other controlled substances, multiple DUIs, and multiple theft or burglary attempts.” Just four days earlier he had been arrested on multiple charges.

According to the jurisdiction/disposition report, there had been five referrals since 2010, and the referrals indicated that mother had “a substance abuse problem that persistently caused her to struggle to adequately meet the needs of the children.” In March 2010, mother had asked that J.H. and an older daughter (from a different father) be removed from her custody, and she was referred to Pathways to Safety for services. In 2012 the Department received another referral regarding mother, who was homeless. The report indicated that mother left J.H. and her older daughter with their respective fathers.

On December 8, 2014, the Department received another referral. Father had been arrested and J.H. was living with a non-related female family friend in a home, which was described as filthy. There were child molestation charges pending against a juvenile member of the household, and the responding police officers suspected “possible drug use” by the friend. Before father’s arrest J.H. had been living with him, but he was

homeless. They lived in tents in the woods. J.H. was placed in protective custody on December 9, 2014.

The jurisdiction/disposition report indicated that father was released from jail on bail on December 8, 2014. At a team decision-making meeting two days later, father submitted to a drug test, which produced a positive result for marijuana and methamphetamines. Father failed to appear for the detention hearing on December 11, 2014.

The case plan, which was attached to the jurisdiction/disposition report, provided for a minimum of one supervised visit per week. A scheduled visit would be cancelled if the parent arrived more than 15 minutes after the visit was scheduled to begin. The frequency and length of the proposed visitation corresponded to “the parent’s progress, or lack of progress and the needs of the child.”

At the jurisdictional/disposition hearing on January 20, 2015, father submitted the matter on the Department’s January 14 report. The juvenile court declared J.H. a dependent child of the court, removed her from father’s physical custody, ordered her to remain under the Department’s care, custody, and control for suitable placement, and ordered family reunification services for father. Services were not ordered for mother, whose whereabouts were unknown. The court approved the case plan and ordered all parties to comply with it. The court further determined that visitation with the child by father would not be detrimental and directed the Department to arrange the time, place, and supervision of the visitation.

The Department filed its status review report on July 6, 2015 in preparation for the six-month review hearing (§ 366.21, subd. (e)). The Department recommended continuing family reunification services for father. It again noted that father had “a history of substance abuse and criminal behavior that inhibits his ability to adequately care for the child.” His criminal history included “multiple convictions for possession of marijuana and other controlled substances, multiple DUIs, and multiple theft or burglary

attempts.” He had been arrested on December 6, 2014 for a number of crimes. Although no new criminal charges had been filed during the review period, there was “an outstanding bench warrant for his failure to appear for misdemeanor arraignment.”

According to the July 2015 report, father had stated that he was currently homeless and that he had been working in construction seven days a week since April 2015. The facilitator of a parent education group, which had been set to start on June 30, 2015, had experienced difficulties reaching father. Father had been unwilling or unavailable to participate in parenting classes. With regard to substance abuse, father had not completed an alcohol and drug assessment as required by the case plan, he had not complied with all drug testing requests, he was not attending “NA” meetings, and he did not have a 12-step sponsor. Father had “not had monthly contact with the Department to discuss his case plan” and had been unwilling or unavailable to meet with the social worker, despite her repeated requests and her willingness to meet him near his worksite. During the limited contact they did have, father had behaved aggressively, yelling and cursing.

The social worker summarized the Department’s position that father had been unwilling to participate in any of his case plan activities and had not made sufficient progress toward reunification. He had maintained only “sporadic contact with the Department,” and he “continuously [*sic*] use[d] his employment as an excuse as to why he [was] not available to participate in services.”

As to visitation, the social worker stated that in May 2015, father’s weekly supervised visits had been suspended because father had been inconsistently attending them. Since May he had failed to show up for any visits, except for one in which he arrived over 20 minutes late, which resulted in its cancellation. Although the visits had been scheduled at an agreed-upon time, father still blamed his work schedule for missing visits. J.H. had said, “I miss my dad and love him but he is not showing up to visit me. I want to be back with my dad or be adopted if I can’t.” The Department nonetheless

recommended that the juvenile court allow visitation by father “in accordance with the case plan,” with the frequency, time, place, and supervision to be arranged by the Department.

At the uncontested hearing on July 21, 2015, the juvenile court ordered father to “drug test forthwith” and to show proof of employment. He tested positive for methamphetamine and opiates. The court continued the matter to September 15, 2015.

In an addendum report dated September 9, 2015, the Department recommended that reunification services for father be terminated and that the matter be set for a selection and implementation hearing. According to the report, father had been “unwilling to participate in any of his case plan activities” and he had “not made any progress toward unification.” The report specifically advised the court that father had “made no contact with the Department since the last court hearing on July 21, 2015.” It also stated that father had “yet to address his substance abuse issues.” He had refused to comply with drug testing throughout the past six months. When father was ordered to drug test at the six-month review hearing, he tested positive for amphetamines and opiates.

As to visitation, the Department noted that father had had no contact with J.H. for the past six months. When the social worker attempted to address the subject, father became “defensive and [blamed] others for not making it to visitation. For example, he has stated that he was not informed about the visitation, he arrived to visitation but nobody was present, or he uses his employment as an excuse for not making it to visitation. However, the father has not shown any proof of employment. Since the last court hearing on July 21, 2015, [he] has made no request to visit with [J.H.]”

At the ensuing hearing on September 15, 2015, the juvenile court terminated reunification services to father. Father’s counsel, but not father, appeared at the hearing. Father’s counsel reported that she had not had any contact with father. The court observed that father had “had no contact with virtually anyone since the last hearing, and

[he] ha[d] not had any contact with J.H. for the last six months.” The court ordered that no visitation take place with either parent until the Department determined that it was appropriate.² It set the section 366.26 hearing for January 9, 2016. The court authorized the Department to give notice of the section 366.26 hearing to father by publication. (See § 294, subd. (f)(7)(A) [publication notice to parent whose whereabouts are unknown].)

The “366.26 WIC Report,” dated January 19, 2016, indicated that father had not had any contact with J.H. since May 2015. During that time, he had not requested any visits with J.H.

On March 9, 2016, the juvenile court held a section 366.26 hearing at which father was present in custody. The court terminated the parental rights of father and mother, and it selected adoption as the permanent plan for J.H. Father then filed a notice of appeal.

Discussion

On appeal, father contends that the September 2015 order terminated visitation “without evidence of detriment” and thereby “impermissibly deprived [him] of his constitutionally protected rights as a parent.” We must first determine whether the order is properly before us.

² We note that the preprinted findings and orders attached to the September 15, 2015 minute order, neither of which was signed by the judge, do not appear necessarily to reflect the findings and orders orally made by the court. The court did not expressly state that “[v]isitation with the child by the father, as set forth in the report of the court social worker, would be detrimental” and that “[t]here shall be no visitation between the father and the child until the Department determines that visitation would be safe for the child or until further order of the court.” Ordinarily, where there is a discrepancy between the reporter’s transcript and the clerk’s minute order, “[t]he record of the oral pronouncement of the court controls over the clerk’s minute order. . . [Citations.]” (Cf. *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2 [relying on oral pronouncement of probation conditions].)

1. *Review of Earlier Orders*

“A judgment in a proceeding under Section 300 may be appealed in the same manner as any final judgment, and any subsequent order may be appealed as an order after judgment.” (§ 395, subd. (a)(1).) “As a result of these broad statutory terms, ‘[j]uvenile dependency law does not abide by the normal prohibition against interlocutory appeals’ [Citations.] The dispositional order is the ‘judgment’ referred to in section 395, and all subsequent orders are appealable. [Citation.]” (*In re S.B.* (2009) 46 Cal. 4th 529, 532.) A notice of appeal must ordinarily “be filed within 60 days after the rendition of the judgment or the making of the order being appealed.” (Cal. Rules of Court, rule 8.406(a)(1).)³

“ ‘A consequence of section 395 is that an unappealed disposition or postdisposition order is final and binding and may not be attacked on an appeal from a later appealable order.’ [Citation.] An appeal from the most recent order in a dependency matter may not challenge earlier orders for which the time for filing an appeal has passed. [Citation.] ‘Permitting a parent to raise issues going to the validity of a final earlier appealable order would directly undermine dominant concerns of finality and reasonable expedition,’ including ‘the predominant interest of the child and state’ [Citation.]” (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018 (*Sara M.*)).

Under section 395 and *Sara M.*, father may not attack earlier orders—specifically, the termination of visitation on September 15, 2015—through an appeal from the March 2016 order terminating his parental rights. “Given the state’s strong interest in the expeditiousness and finality of juvenile dependency proceedings [citation], the statutory scheme generally does not permit the critical findings and orders made prior to the final

³ All further references to rules are to the Rules of Court.

setting of the 366.26 hearing to be reopened and relitigated in an appeal from the order terminating parental rights. Nor can the order setting the hearing itself, or any findings subsumed therein, be appealed unless earlier writ review of any substantive claim was first sought and denied. (§ 366.26, subd. (l).) And the Legislature has further expressly provided that the final order terminating parental rights and freeing the child for adoption itself cannot be collaterally attacked in the trial court. (§ 366.26, subd. (i).)” (*In re Zeth S.* (2003) 31 Cal.4th 396, 412-13, fn. omitted; see rules 8.450, 8.452.)

Father insists, however, that he may challenge that order in this appeal because the juvenile court failed to advise him that to obtain appellate review of an order setting a section 366.26 hearing a parent must file a petition for extraordinary writ relief.⁴ “When the court orders a hearing under Welfare and Institutions Code section 366.26, the court must advise all parties and, if present, the child’s parent, guardian, or adult relative, that if the party wishes to preserve any right to review on appeal of the order setting the hearing under . . . section 366.26, the party is required to seek an extraordinary writ by filing a *Notice of Intent to File Writ Petition and Request for Record* (California Rules of Court, Rule 8.450) (form JV-820) or other notice of intent to file a writ petition and request for

⁴ The appeal in this case is not a purported appeal from the September 15, 2015 order setting the section 366.26 hearing. Thus, “we are not in the procedural posture to treat a timely appeal from an order setting a section 366.26 hearing as a cognizable appeal or as a writ petition. (Cf. *In re Merrick V.* (2004) 122 Cal.App.4th 235, 247-249 [appellate court reviewed mother’s claims on appeal from setting order because court failed to orally provide her with notice of the writ requirement]; *Jennifer T. v. Superior Court* (2007) 159 Cal.App.4th 254, 260 (*Jennifer T.*) [where juvenile court failed to orally advise mother of her writ rights, appellate court construed purported appeal from order setting § 366.26 hearing as a standard petition for writ of mandate ‘without regard to the shortened period for writ review that would otherwise be applicable (Rules 8.450, 8.452.)’].)” (*In re A.H.* (2013) 218 Cal.App.4th 337, 350, fn. omitted; cf. *Maggie S. v. Superior Court* (2013) 220 Cal.App.4th 662, 671 [since juvenile court failed to orally advise the mother of the writ requirement, appellate court excused her lack of compliance with that requirement and construed her purported appeal as a petition for extraordinary writ].)

record and a *Petition for Extraordinary Writ* (California Rules of Court, Rules 8.452, 8.456) (form JV-825) or other petition for extraordinary writ.” (Rule 5.590(b); see § 366.26, subd. (l)(3)(A).) “The advisement must be given orally to those present when the court orders the hearing under . . . section 366.26.” (Rule 5.590(b)(1); see § 366.26, subd. (l)(3)(A).) “Within one day after the court orders the hearing under . . . section 366.26, the advisement must be sent by first-class mail by the clerk of the court to the last known address of any party who is not present when the court orders the hearing under . . . section 366.26.”⁵ (Rule 5.590(b)(2); see § 366.26, subd. (l)(3)(A).)

Father did not appear at the September 2015 hearing, so the court did not orally advise him that he could challenge the setting of the section 366.26 hearing by petition for extraordinary writ. Nor does it appear that the clerk of the court mailed the requisite advisement to any address it had for father. However, the court’s September 15, 2015 order did contain a written notice explaining that to preserve the right to appeal the order setting the section 366.26 hearing, a party must seek an extraordinary writ. In addition, the court authorized the Department to give notice of the “period to obtain writ review” by publication, presumably because father had reported that he was homeless prior to the July 21, 2015 status review report and he had not been in contact with the Department since the July 21, 2015 hearing at which he appeared. On January 19, 2016, the social

⁵ Former section 316.1, subd. (a), provided: “Upon his or her appearance before the court, each parent . . . shall designate for the court his or her permanent mailing address. The court shall advise each parent . . . that the designated mailing address will be used by the court and the social services agency for notice purposes unless and until the parent . . . notifies the court or the social services agency of a new mailing address in writing.” (Stats.1992, ch. 288, § 1, p. 1184; see rule 5.534(m).) An appellate court has observed: “A permanent mailing address, designated for purposes of receiving notices, need not be the address at which a parent is actually residing. Many homeless people are capable of designating a permanent mailing address at which they can receive mail.” (*In re Rashad B.* (1999) 76 Cal.App.4th 442, 450 (*Rashad B.*)).

worker filed a Declaration of Due Diligence attesting to her efforts to contact father without success.

Case law has carved out a “good cause” exception to the rule that failure to timely seek writ review of an order setting a section 366.26 hearing bars appellate review. The exception may apply when a parent is not properly advised of his or her right to challenge that order by extraordinary writ. (See *In re Cathina W.* (1998) 68 Cal.App.4th 716, 722 (*Cathina W.*);⁶ see also *Rashad B.*, *supra*, 76 Cal.App.4th at p. 450; *In re Frank R.* (2011) 192 Cal.App.4th 532, 539.)

Father urges us to follow *In re A.O.* (2015) 242 Cal.App.4th 145 (*A.O.*). There the mother conceded that her appeal from the orders after the review hearings did not embrace her challenge to the jurisdictional findings and disposition order. She nevertheless asked the appellate court to reach the merits of her claims because the trial court had violated rule 5.590(a) by failing to inform her of her right to appeal at the conclusion of the disposition hearing.⁷ (*A.O. supra*, at p. 147.) Relying on *Cathina W.*,

⁶ In *Cathina W.*, the appellate court determined that the appellant mother had shown good cause for her failure to seek writ relief in compliance with section 366.26, subdivision (*l*), and the associated court rule, and the court addressed her contentions with respect to the setting order on appeal from the subsequent order terminating her parental rights. (*Cathina W.*, *supra*, 68 Cal.App.4th at p. 722.) The mother was not present when the court ordered the section 366.26 hearing, and the clerk of the court had not mailed the requisite advisement regarding the writ requirement to the last known address of the mother within one day after the court’s order setting the section 366.26 hearing. Instead, the clerk mailed “judicial council form ‘NOTICE OF INTENT TO FILE WRIT PETITION AND REQUEST FOR RECORD, RULE 39.1B’ ” to the mother four days after the entry of the setting order. (*Cathina W.*, *supra*, at p. 723.) “In addition, the face of the notice contain[ed] the typed date ‘8-26-97’ in the space provided for insertion of the day on which the juvenile court calendared the section 366.26 hearing” and that “date was wrong by some four months” (*Ibid.*)

⁷ Rule 5.590(a) provides in pertinent part: “If at a contested hearing on an issue of fact or law the court finds that the child is described by Welfare and Institutions Code section 300 . . . or sustains a supplemental or subsequent petition, the court after making its disposition order other than orders covered in (b) [advisement that writ petition must (continued)]

the appellate court held that a juvenile court's "failure to provide the appeal advisement contained in the same rule of court as the writ advisement [Rule 5.590] is a ' "special circumstance[] constituting an excuse for failure to [timely appeal]." ' [Citation.]" (*Id.* at p. 149.) The appellate court reached "the merits of mother's challenges to jurisdiction and disposition by treating that portion of her appeal as a petition for an extraordinary writ." (*Ibid.*)

In this case, the record does not show that father was unaware of the requirement that he file a writ petition to preserve any right to appellate review of the order setting the section 366.26 hearing or that, during the period between the July 21, 2015 hearing and the March 9, 2016 hearing, he was prevented by circumstances beyond his control from communicating with his counsel, who was obligated to keep him fully informed and advise him of his rights. (See *Conservatorship of John L.* (2010) 48 Cal.4th 131, 151-152.) Father was represented by counsel at all relevant times, including the September 15, 2015 hearing (when the court issued its order setting the section 366.26 hearing) and the March 9, 2016 hearing under section 366.26, but father took no legal steps in the interim six months to prevent the section 366.26 hearing from going forward. At the section 366.26 hearing, father was present, but neither he nor his counsel asserted any excuse for his failure to file a writ petition seeking review of the court's order setting a section 366.26 hearing or raised any claims concerning that order. Father's counsel merely indicated that there were many issues that prevented father from visiting J.H., visits were suspended and never resumed, and father had "just not, unfortunately, been able to be a father to her during this time." Counsel stated that she and father had discussed the legal exceptions to adoption and that they agreed that there was no evidence

be filed to preserve appellate rights] must advise, orally or in writing, . . . if present, the parent . . . of: [¶] (1) The right of the . . . parent . . . to appeal from the court order if there is a right to appeal; [¶] (2) The necessary steps and time for taking an appeal"

to support an exception in this case. Father has failed to demonstrate to our satisfaction that his failure to comply with the writ requirement should be excused based on exceptional circumstances constituting good cause.

2. Visitation

Even if we were to reach father's claim that the juvenile court erred by acquiescing to the suspension of father's visits without a finding of detriment to J.H., we would reject it. It is true that when the juvenile court places a child in foster care and orders reunification services, the court generally must order "visitation between the parent or guardian and the child." (§ 362.1, subd. (a)(1)(A).) Such visitation must be "as frequent as possible, consistent with the well-being of the child." (*Ibid.*) But "[n]o visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(B).) "[A] court has the power to suspend visits when continuing them would be harmful to a child's emotional well-being." (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1357 (*Brittany C.*).

"The juvenile court has the sole power to determine whether visitation will occur and may not delegate its power to grant or deny visitation to the DSS. The court may, however, delegate discretion to determine the time, place and manner of the visits. Only when the court delegates the discretion to determine whether any visitation will occur does the court improperly delegate its authority and violate the separation of powers doctrine. (*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374; *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237 [order for 'Visitation in the discretion of DPSS and minors' was not improper delegation of judicial powers].)" (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008-1009 (*Christopher H.*)). "It is the juvenile court's responsibility to ensure [that] regular parent-child visitation occurs while at the same time providing for flexibility in response to the changing needs of the child and to dynamic family circumstances." (*In re S.H.* (2003) 111 Cal.App.4th 310, 317; see *In re Moriah T.*, *supra*, at p. 1376 ["Visitation arrangements demand flexibility to maintain and improve the ties

between a parent or guardian and child while, at the same time, protect[ing] the child's well-being.'].") "To promote reunification, visitation must be as frequent as possible. [Citation.]" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972.)

Even if the court orders termination of reunification services, it must "continue to permit the parent or legal guardian to visit the child pending the hearing unless it finds that visitation would be detrimental to the child." (§ 366.21, subd. (h); § 366.22, subd (a)(3); *In re Manolito L.* (2001) 90 Cal.App.4th 753, 759-760.) "Absent a showing of detriment caused by visitation, ordinarily it is improper to suspend or halt visits even after the end of the reunification period. [Citations.] Visitation may be seen as an element critical to promotion of the parents' interest in the care and management of their children, even if actual physical custody is not the outcome." (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) "Detriment includes harm to the child's emotional well-being." (*Brittany C.*, *supra*, 191 Cal.App.4th at p. 1357; *Christopher H.* *supra*, 50 Cal.App.4th at p. 1008.)

Here, the juvenile court's order authorizing father to have at least one weekly visit remained in effect until September 15, 2015, when the court ordered father's visitation with J.H. discontinued until the Department determined that it was again appropriate. Prior to July 21, 2015, it appears to have been within father's power to resume visitation at any time by identifying a regular time when he could consistently visit with J.H. However, father thereafter failed to contact the Department even to request resumption of visitation.

In addition, father tested positive for methamphetamine and opiates when he submitted to the court's July 21, 2015 order to "drug test forthwith." By the time of the September 15, 2015 hearing, at which father failed to appear, the court had no information that father had discontinued his use of controlled substances after the positive drug test. At that point, father had been completely out of contact with the Department, his counsel, and his daughter (whom he professed to love) for an extended time. There

was no evidence that father was able to commit to consistent, drug-free visitation. Under those circumstances, the court acted within its discretion by allowing visitation with J.H. only when the Department determined it was appropriate, implicitly concluding that visitation would be detrimental to J.H. if circumstances were unchanged. (See §§ 362.1, subd. (a)(1)(B), 366.21, subd. (h); 366.22, subd. (a)(3).)

Moreover, even if the court erred by not making an express finding that father's visitation with J.H. would be detrimental to her (see *In re C.C.* (2009) 172 Cal.App.4th 1481, 1491-1492), any error was harmless for the same reason, since father remained out of contact with the Department and his counsel and never sought to resume visitation. (See Cal. Const., art. VI, § 13 ["No judgment shall be set aside . . . in any cause. . . for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice."].) The goal of resolving dependency actions expeditiously "would be thwarted if the proceeding had to be redone without any showing [that] the new proceeding would have a different outcome." (*In re Jesusa V.* (2004) 32 Cal.4th 588, 625.)

3. *Ineffective Assistance of Counsel*

Father argues that his counsel provided ineffective assistance by "never rais[ing] the issue of visitation or question[ing] the denial of visitation without factual evidence that visits were detrimental to [J.H.]." He contends that there is no satisfactory explanation for his counsel's failures to advocate for visitation, to object to the suspension of visitation, and to file a notice of appeal from the court's July 2015 and September 2015 orders. He claims that, if his counsel had provided effective assistance, there is a reasonable probability that he would have obtained a more favorable outcome, namely "no termination of parental rights."

Even if we were able to reach father's claim that his counsel rendered ineffective assistance, we would reject it. "To succeed on an ineffective assistance claim, a parent

must show counsel's representation fell below an objective standard of reasonableness and the deficiency resulted in demonstrable prejudice. [Citations.] To prove prejudice, the parent must show a ‘ “reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. ’ ” [Citation.]” (*Kemper v. County of San Diego* (2015) 242 Cal.App.4th 1075, 1089; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1180.)

In this case, father failed to participate in his case plan, including visitation. He entirely disappeared from the dependency proceedings between July 21, 2015 and March 9, 2016, when the section 366.26 hearing was held. Even if his counsel had obtained weekly visitation for father at the September 2015 hearing, father remained incommunicado until the March 9, 2016 hearing. Under these circumstances, father has failed to establish the prejudice prong of his ineffective assistance of counsel claim.

DISPOSITION

The order terminating parental rights and selecting adoption as the permanent plan for J.H. is affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.